IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.696 OF 1997

In

NOTICE OF MOTION NO.1852 OF 1995

In

SUIT NO.1747 OF 1995

1. Mohamed Anis Mohamed Rafiq
2. Hajira Begum Mohamed Anis
   both of Bombay Indian Inhabitants,
   having their address at
   Shop Nos.1 and 2, Imperial Hair
   Cutting Saloon, Ram Mansion,
   Navroji Fardunji Road, Colaba,
   Bombay--400 039.
3. Munir Alam Azizullah
4. Sabira Begum Azizullah
5. Kaneez Fatima alias Salli
   All adults of Bombay Inhabitants,
   residing at Room No.18,
   1st floor, Akbar House,
   Navroji Fardunji Road, Colaba,
   Bombay--400 039. : Appellants

(Orig.Defendants)

V/s.

1. Mohamed Naseem Mohamed Rafiq
2. Mohamed Raees Mohamed Rafiq
3. Shakila Banu Mohamed Rafiq
4. Rashida Banu Mohamed Rafiq
   All Adults of Bombay Indian
   Inhabitants, residing at
   23/C Mona-Lisa Apartments,
   Room No.4A, Chinchpokli Road,
   Bandra (West), Bombay--400 050.
5. Mohamed Hanif Mohamed Rafiq
   Adult of Bombay Indian Inhabitant,
   residing at Building No.2,
   Room No.17, Tata Colony,
   Bharat Nagar, Bandra (East),
   Bombay--400 051.

6(a) Zaibunnisa Wd/o. Mohamed
     Nasir
6(b) Zarin D/o Mohamed Nasir,
6(c) Azreen D/o Mohamed Nasir,
6(d) Azra D/o Mohamed Nasir,
6(e) Meenaz D/o Mohamed Nasir
6(f) Mohamed Shoaib S/o Mohamed Nasir,
     Respondent Nos.6(d), 6(e), and
     6(f) minors through their Mother
     and natural guardian, the
     Respondent No.1 abovenamed,

all residing at Building No.10,
Room No.232, Tata Colony,
Bharat Nagar, Bandra (East),
Bombay--400 051. : Respondents

...

Ms E.A. Gonsalves for the appellants.

Mr.A.S.Khatib for the respondents.

...

CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATE : NOVEMBER 8, 2006.

ORAL JUDGEMENT (Per R.M.Lodha,J.)

1. By the order dated 14.7.1997, the learned Motion Judge directed the Court Receiver to invite the plaintiffs as well as the defendants to make offers for acceptance of the agency agreement. The learned Motion Judge further directed that the Receiver shall accept the highest offer and the agency agreement shall thereafter be executed afresh. While doing so, the learned Motion Judge set aside the royalty fixed in respect of the premises situate at shop nos.1 and 2, Ram Mansion, Navroji Fardunji Road, Colaba, Mumbai, over which the Receiver stood appointed by the earlier order.

2. The defendant nos.1 to 5 have come up in appeal challenging the part of the impugned order whereby the learned Motion Judge permitted the plaintiffs to bid for

the agency agreement.

3. The counsel for the appellants submits that the defendants nos.2, 3, 4 and 5 jointly own 88% share in the suit premises, in addition to 2.40% share of the defendant no.1 and, therefore, there was no justification for the learned Motion Judge to permit the plaintiffs to bid for the agency agreement.

4. The plaintiffs and the defendant no.1 are brothers and sisters. According to the case set up by the plaintiffs, the plaintiffs and the defendants are joint owners of the business of hair-cutting saloon carried on by them in the name and style of "M/s.Imperial Hair Cutting Saloon" at the suit premises. The plaintiffs claim to be jointly entitled to total share of 35% in the said business together with the suit premises. However, on the basis of the available material, prima facie, it cannot be said that the plaintiffs have 35% share in the business and the business premises of M/s.Imperial Hair Cutting Saloon. On the basis of the Assignment of Deed dated 29.4.1981 and consent terms filed in Suit No.3866 of 1979 (Smt.Laifan widow of Sanaullah Sallan v. Mohammed Anees son of Rafiq and anr.) dated 30.4.1981, prima facie, it appears that the defendant nos.2 to 5 jointly own 88% share in the business and business premises of M/s.Imperial Hair

Cutting Saloon while each of the plaintiffs and the defendant no.1 has 2.40% share. The plaintiffs collectively thus have 9.60% share while the defendant nos.2 to 5 along with the defendant no.1 have 90.40% share. This being the position, we find no justification in the order of the learned Motion Judge permitting the plaintiffs to bid for the agency agreement. Though the defendant no.1 is the brother of the plaintiffs, he appears to be supporting the case of the defendant nos.2 to 5 and the defendant nos.2 to 5 are agreeable that the defendant no.1 may be permitted to have the agency agreement in his favour. The defendant no.1, therefore, can be permitted to act as the agent of the Court Receiver not because he has 2.40% share, but because the defendant nos.2 to 5 who own 88% share desire the defendant no.1 to continue as the agent of the Court Receiver. It is not in dispute that the defendant no.1 has been carrying on business in the suit premises for the last 25 years. The counsel for the appellants submitted that instead of directing the Court Receiver to fix royalty, this Court may fix appropriate and reasonable royalty. Having considered the views of the counsel for the appellants and the respondents, in our view, the royalty at the rate of Rs.10,000/- per month shall be fair and reasonable.

5. We, accordingly, dispose of the appeal by the

following order:-

(i) The direction given in the order dated 14.7.1997 that the Receiver shall invite the plaintiffs as well as the defendants to make offers for acceptance of the agency agreement is set aside. The appointment of the defendant no.1 as the agent of the Court Receiver made by the Court Receiver shall remain operative until the disposal of the suit. The royalty is fixed at the rate of Rs.10,000/- (Rupees Ten Thousand only) per month with effect from 1.1.2007.

(ii) We direct the Court Receiver to invest the royalty deposited so far in Fixed Deposit of any Nationalised Bank for a reasonable period. We further direct that henceforth, the Court Receiver shall invest the royalty so received every six months in Fixed Deposit of any Nationalised Bank.

(iii) The order dated 14.7.1997 stands modified accordingly.

No order as to costs.

Sd/-

R.M. LODHA, J.

Sd/-

S.A. BOBDE, J.